

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN T. BURTON,	§	
	§	No. 577, 2005
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in
v.	§	and for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0410003743
Appellee.	§	

Submitted: July 10, 2006

Decided: August 21, 2006

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 21st day of August 2006, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In August 2005, a Superior Court jury convicted the appellant, Marvin T. Burton, of one count each of Rape in the First Degree, Rape in the Second Degree and Unlawful Sexual Contact in the Second Degree. The Superior Court declared Burton a habitual criminal and sentenced him to two life sentences plus two years at Level V.¹ This appeal followed.

¹See generally Del. Code Ann. tit. 11, § 4214(a), (b) (2001 & Supp. 2004) (providing for sentencing as habitual criminal).

(2) On appeal, Burton’s counsel (“Counsel”) has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that Counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.² Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.³

(3) Counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, Counsel informed Burton of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Burton was also informed of his right to supplement Counsel’s presentation. Burton did not submit any points for this Court to consider. The State has responded to the position taken by Counsel and has moved to affirm the Superior Court’s judgment.

²*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

³*Id.*

(4) This Court has reviewed the record carefully and has concluded that Burton's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Counsel has made a conscientious effort to examine the record and the law and has properly determined that Burton could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice